

ENTERED

May 29, 2020

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**WALTER ALEXANDER SORTO,
Petitioner,**

v.

**LORIE DAVIS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,
Respondent.**

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H-10-CV-613

ORDER

Before the Court is Petitioner's request for funding, pursuant to 18 U.S.C. § 3599(f), for a comprehensive adaptive functioning assessment in support of his *Atkins* claims. (Doc. No. 41). The Court previously denied Petitioner's funding request based on the Fifth Circuit's then-operative interpretation of § 3599(f). (Doc. No. 47). However, after the United States Supreme Court concluded that "the Fifth Circuit's interpretation of § 3599(f) is not a permissible reading of the statute," *Ayestas v. Davis*, 138 S. Ct. 1080, 1095 (2018), the Fifth Circuit vacated this Court's funding denial and remanded for reconsideration in light of *Ayestas*. (Doc. No. 61).

Having considered the Fifth Circuit's remand order, *Ayestas*, and the parties' supplemental briefing on the issue, the Court finds that funding for a comprehensive adaptive functioning assessment is "reasonably necessary" for Petitioner's representation. 18 U.S.C. § 3599(f). Further, the Court hereby certifies that an additional \$7,500 in funding to hire Dr. Gilbert Martinez to perform said assessment is "necessary to provide fair compensation for services of an unusual character or duration." 18 U.S.C. § 3599(g)(2).

Petitioner's Motion for Reasonably Necessary Services of Psychologist (Doc. No. 41) is

GRANTED. The Court authorizes counsel for Sorto to secure the services of Dr. Gilbert Martinez in the total amount of \$7,500.

IT IS SO ORDERED.

SIGNED at Houston, Texas, this the 29th day of May, 2020.



KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE